

No. 26-179

In the Supreme Court of the United States

OCTOBER TERM 2026

TERRY BRANDERS,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Fourteenth Circuit

PETITIONER'S BRIEF ON THE MERITS

Team KP

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QUESTIONS PRESENTED

- I. Whether the defendant's felon status under 18 U.S.C. § 922(g)(1) precludes her from bringing an as-applied challenge to the statute's constitutionality under the Second Amendment?
- II. Assuming an as-applied challenge exists, is the application of 18 U.S.C. § 922(g)(1) unconstitutional when the defendant has only a single twenty-year-old conviction for felony child neglect and does not pose a present danger?

STATEMENT OF THE CASE

Factual Background

Petitioner, Terry Branders, is a retired mother living in Appleton, Newcoastland. R. at 3. While living in Appleton, Branders has become involved in multiple charities, including the local food bank and stocking school supplies for children in need. *Id.* Branders is in her late seventies and recently, her son Nelson moved in with her to provide her with extra assistance as she continues to age. *Id.* Branders has allowed Nelson to live in the basement of her home, and he comes and goes from the home as he pleases. *Id.*

The relationship between Nelson and Branders has soured over the years. R. at 3. Upon retiring in 2000, Branders sought Nelson's assistance when she began operating a daycare in her home in Alexandria, Virginia. R. at 2. Nelson was eighteen years old at the time and had recently graduated from high school. *Id.* Nelson's sole responsibility was to provide pick-up and drop-off services for the children attending the daycare. *Id.* Nelson was accustomed to taking the children inside the home after picking them up. *Id.*

With no other obligations, Nelson was known to have quite a social life. R. at 2. One morning after a late night out, Nelson made the decision to pick up the children from daycare. *Id.* Nelson picked up a total of twelve children, including an eleven-month-old infant, Kenneth. *Id.* When Nelson arrived at the home daycare, he removed all the children from the van except Kenneth. *Id.* Nelson then drove the van back to his apartment and went back to sleep. *Id.* Because it was customary for Nelson to place Kenneth in his crib upon drop-off, Branders did not realize he was missing until later. *Id.* Branders spent over an hour attempting to contact both Nelson and Kenneth's mother. *Id.* Nelson failed to answer his phone. *Id.* Nelson later admitted he

was tired that morning, and the children's rambunctiousness could have caused him to miss something. *Id.* Unfortunately, by the time Kenneth was located, he had suffered severe heat-related injuries, and he later succumbed to his injuries. *Id.* Nelson and Branders were both convicted of felony child neglect under Va. Code § 18.2-371.1. *Id.* Branders was sentenced to a two-year suspended sentence and placed on probation. *Id.* Nelson was sentenced to a four-year prison term. R. at 3.

Since the incident, Branders moved to Appleton in search of a new start. R. at 3. Nelson, however, continues to blame Branders for the trajectory of his life. *Id.* Nelson frequently has angry outbursts in Branders's home, insists that she never enter the basement, and fails to maintain a stable job. *Id.* In response to her familial issues, Branders sought comfort from a close friend, Becky Haskill, and voiced her concerns regarding Nelson. *Id.* Branders expressed her suspicion that Nelson might be selling or using drugs from her residence and described Nelson's "friends" as particularly scary. *Id.* Upon hearing Branders's concerns, Becky gifted her a firearm for her protection. *Id.* Branders was initially hesitant but accepted the firearm and immediately locked it in a living room drawer. *Id.*

In June 2024, the United States Drug Enforcement Administration (DEA) received a tip regarding Nelson's activities. R. at 3. Knowing that Nelson lived with Branders, they approached her house and requested permission to search it. R. at 3-4. According to DEA agents, Branders was the only one home and was "quite cooperative." R. at 4. Branders allowed the agents to search the residence and explained she was the owner of the home, but that Nelson stayed in the basement. *Id.* Upon searching, agents located the firearm in the drawer. *Id.* Branders explained that the firearm was gifted to her by a friend. *Id.* Branders explained to DEA agents that she was a responsible firearm owner, as she kept the ammunition and the firearm locked separately. *Id.*

Prior to entering the home, DEA agents were aware of Branders’s 20-year felony conviction and placed her under arrest for possessing the firearm. *Id.*

Procedural History

Branders was charged on July 3, 2024, with possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). R. at 4. Branders moved to dismiss the charge, contending that the statute violated the Second Amendment as applied to her. *Id.* The District Court for the Eastern District of Newcoastland ruled 18 U.S.C. § 922(g)(1) violated Branders’s Second Amendment right and dismissed the indictment. R. at 7. The United States Court of Appeals for the Fourteenth Circuit vacated the district court’s decision and remanded the case for further proceedings. R. at 10. Branders entered an *Alford* plea, reserving the right to appeal the denial of her motion to dismiss the indictment. R. at 12. This Court granted certiorari. R. at 13.

SUMMARY OF THE ARGUMENT

The Second Amendment right to bear arms for self-defense is a fundamental right rooted in this Nation’s history. Accordingly, it is vital that courts are guided by this Nation’s historical traditions in determining when an individual’s Second Amendment right may be revoked.

The United States Court of Appeals for the Fourteenth Circuit erred in ruling 18 U.S.C. § 922(g)(1) constitutional as applied to Branders and vacating the decision of the United States District Court for the Eastern District of Newcoastland. A historical analysis of the text of the Second Amendment establishes that “the people” as referenced in the amendment is intended to encompass all Americans. While many courts have ruled felons are among those individuals whose conduct is not protected by the Second Amendment, these rulings are not rooted in historical traditions and are not binding on this Court. Here, Branders is an active volunteer for

multiple charities in Appleton and thus certainly falls within the meaning of “the people.”

Accordingly, she is protected by the Second Amendment to bring an as-applied challenge to 18 U.S.C. § 922(g)(1).

Furthermore, 18 U.S.C. § 922(g)(1) as applied to Branders is a violation of her Second Amendment right to bear arms for self-defense. The *Bruen* Second Amendment framework shifts the burden to the Government to demonstrate that the regulation is rooted in this Nation’s historical traditions of firearm regulations. Here, the Government failed to carry its burden, and thus the regulation is unconstitutional as applied to Branders. Firearm regulation as applied to felons is a recent legislative measure and is not grounded in this Nation’s historical traditions. The categorical disarmament of felons is overbroad and waters down the intent of the historical framework analysis. Rather, courts should narrowly construe historical traditions that regulate a subset of individuals.

Lastly, the pre-ratification history of the Second Amendment, together with post-ratification case law, confirms that the central component of the Second Amendment is the right to bear arms for self-defense. Courts should adhere to an individualized historical analysis of the predicate offense. Only where the regulation is grounded in traditional laws, and the individual poses a present danger, can the statute be found constitutional as applied to the individual. Thus, a lack of historical tradition of regulating firearms and Branders’s lack of posing a present threat to others demonstrates that 18 U.S.C. § 922(g)(1) is unconstitutional when applied to her case.

For these reasons, this Court should reverse the United States Court of Appeals for the Fourteenth Circuit’s judgment and find 18 U.S.C. § 922(g)(1) unconstitutional as applied to Branders.

ARGUMENT

I. The plain text of the Second Amendment establishes that felons are among those whose conduct is covered by the Second Amendment to bring an as-applied challenge to 18 U.S.C. § 922(g)(1).

When interpreting constitutional language, courts must heed the Constitution's text and interpret it according to its ordinary meaning and original understanding. *United States v. Rahimi*, 602 U.S. 680, 718-719 (Kavanaugh, J., concurring). Courts have long relied on examining pre-ratification history and precedent when determining the meaning of constitutional text. *Id.* Namely, when interpreting the Second Amendment, the ordinary meaning of the text's words and phrases should guide the court's interpretation. *See District of Columbia v. Heller*, 554 U.S. 570, 577 (2008). Textual analysis, pre-ratification history, and post-ratification case law support the proposition that the Second Amendment was intended to protect the right of all Americans to bear arms and was not intended to exclude any subset of individuals. This Court's decision in *Rahimi* confirms that even violent offenders may enjoy the protection of the Second Amendment. *See Rahimi*, 602 U.S. at 693. Additionally, any findings that felon-in-possession laws are presumptively lawful are not grounded in this Nation's historical tradition of firearm regulation and thus can only be regarded as dicta. Accordingly, Branders's conduct falls within the protections of the Second Amendment and permits her to bring an as-applied challenge to 18 U.S.C. § 922(g)(1).

A. "The people" as referenced in the Second Amendment, and other provisions of the Constitution, unambiguously refers to all members of the political community.

This Court in *United States v. Verdugo-Urquidez*, stated that "the people" as referenced in the Constitution is a term of art referring to a class of persons who are part of a national community. *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990). In *Heller*, this Court

addressed whether a prohibition on possessing operable firearms in the home violates an individual's Second Amendment right. *Heller*, 554 U.S. at 573. To address the constitutionality of the prohibition, this Court undertook a textual analysis of the Second Amendment to ascertain its central meaning. *Id.* at 576. The Second Amendment provides, "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. A textual analysis requires the separation of the operative clause and prefatory clause in the text. *Id.* at 578. Namely, this Court draws a distinction between two phrases: "the militia" and "the people." *Id.* at 580-81. In making this distinction, the Court notes that the phrase "the people" appears in the operative clause and is used to describe the holder of the right. *Id.* Further, in Colonial America, "the militia" was a subset of "the people." *Id.* Justice Scalia explains that reading the Second Amendment as protecting only the right to keep and bear arms in an organized militia does not logically follow from the use of "the people" in the operative clause, which describes the holder of the right. *Id.* Thus, a textual analysis of "the people" as referenced in the Second Amendment and in other areas of the Constitution establishes that the Framers intended "the people" to encompass the rights of all Americans and did not intend to exclude any specific subset of individuals. *Heller*, 554 U.S. at 581.

Under this textual framework, Branders falls squarely within the meaning of "the people." Branders has been part of the political community in Appleton, Newcoastland for approximately six years. R. at 3. Branders is a volunteer at the local food bank and works with multiple charities in the community. *Id.* Applying the holding in *Heller* to Branders's case demonstrates that Branders's felony conviction does not exclude her from the protection of the Second Amendment.

1. Pre-ratification history and post-ratification caselaw support a finding that the Second Amendment was intended to protect all Americans.

The Second Amendment's pre-ratification history demonstrates that the Second Amendment was drafted with the intent to cover the conduct of all Americans. *Heller*, 554 U.S. at 593-94. Pre-ratification American laws and practices formed part of the foundation on which the Framers contrasted the Constitution and the Bill of Rights. *Rahimi*, 602 U.S. at 720 (2024) (Kavanaugh, J., concurring). In looking at pre-ratification laws, it has long been understood that the Second Amendment codified a pre-existing right to bear arms. *Heller*, 554 U.S. at 592. The Declaration of Rights, often understood as the Second Amendment's predecessor, ensured that Protestants would never be disarmed; thus, the right protected Protestants' right to defend themselves, as permitted by law. *Id.* at 593. The history of the Declaration of Rights reinforces the proposition that the Framers intended the Second Amendment to protect the right of all Americans to self-defense.

The record clearly establishes that Branders accepted the firearm with the intent to keep it in her home for self-defense. R. at 3. Branders is an elderly woman who is potentially at risk. *Id.* Branders expressed concern about the strangers Nelson was bringing into the home and described them as "particularly scary." *Id.* Branders's growing concerns are the grounds upon which she was encouraged to accept the firearm for her protection. *Id.* The facts in Branders's case are the exact same facts upon which the ratification of the Second Amendment was grounded. As the history of the Second Amendment demonstrates, the Second Amendment is intended to protect Branders's right to self-defense in her home.

2. Excluding Branders from the protections of the Second Amendment frustrates the historical framework set forth in *Bruen*.

Finding that Branders belongs to a subset of individuals excluded from the protections of the Second Amendment frustrates the purpose of the Second Amendment framework outlined in *Bruen*. *Bruen* expanded the Second Amendment framework and articulated a two-part test designed to guide courts in determining whether a firearm regulation infringes on an individual's Second Amendment right. *Bruen*, 597 U.S. at 17. *Bruen* requires that courts determine whether the Second Amendment's plain text covers the individual's conduct. *Id.* at 17. If the court finds that the Second Amendment protects the conduct, the Government must demonstrate that the regulation is consistent with this Nation's tradition of firearm regulation. *Id.* Allowing an as-applied challenge is essential in preserving the intended protections of the Second Amendment right. An automatic finding that Branders's conduct excludes her from the protections of the Second Amendment frustrates the purpose of the *Bruen* test, which asks the Government to justify the regulation based on historical laws during the founding era.

If followed to its logical extreme, a finding that the Second Amendment was intended to exclude a specific subset of individuals would result in nonsensical conclusions where a claimant wishes to bring a challenge to a federal firearm regulation but lacks standing to do so. *Kanter v. Barr*, 919 F.3d 437, 452 (7th Cir. 2019) (Barrett, J., dissenting) *abrogated by New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). A hypothetical posed by Justice Barrett in *Kanter v. Barr* illustrates this principle. As Justice Barrett explains, suppose state law mandates that an individual convicted of domestic violence is disqualified from possessing a firearm for a period of 10 years upon being released from prison. *Id.* at 452. If the individual wishes to bring a Second Amendment challenge to a federal firearm regulation applicable to him, he is prevented from doing so based on the justification that the individual falls outside the protection of the

Second Amendment. *Id.* In this case, the statutory disqualification provision allowing the individual to bear arms becomes irrelevant, and the individual has no standing to challenge the federal firearm regulation. *Id.* Such an interpretation would lead to unreasonable results and cannot be what the Framers intended. Interpreting the Second Amendment as covering the conduct of all Americans is consistent with the historical-analysis approach and yields consistent results when challenging federal firearm regulations. As Justice Barrett concluded, an individual convicted of a qualifying crime does not automatically lose his or her right to keep and bear arms but instead becomes eligible to lose the right. *Id.* at 453.

Ruling that Branders belongs to a subset of individuals excluded from the protections of the Second Amendment is in direct contradiction to the intent of the Framers. *See Heller*, 554 U.S. at 581. Thus, under the holdings of this Court in *Bruen* and *Heller*, Branders is eligible to bring an as-applied challenge to the constitutionality of 18 U.S.C. § 922(g)(1).

B. If violent offenders' conduct is protected by the Second Amendment, as demonstrated by *Rahimi*, it must logically follow that a non-violent offender's conduct is protected by the Second Amendment.

The decision in *Rahimi* reinforces the principle that even violent offenders can rely on the protections of the Second Amendment in bringing an as-applied challenge. *See Rahimi*, 602 U.S. at 693. *Rahimi* presented the issue of whether 18 U.S.C. § 922(g)(8), a federal statute prohibiting firearm use by individuals subject to domestic violence restraining orders, may be enforced against *Rahimi* consistent with the Second Amendment. *Id.* at 684. Specifically, the Court addressed whether *Rahimi* could possess a firearm if the restraining order indicated that he posed a credible threat to the safety of others. *Id.* Grounded in surety laws and going armed laws, this Court ruled that when an individual poses a clear threat of physical violence, the individual may be disarmed. *Id.* at 698. Accordingly, the majority opinion notes that the regulation is

constitutional as applied to the facts of Rahimi's case. *Id.* at 693. The as-applied approach taken by this Court in Rahimi's challenge to U.S.C. § 922(g)(8) suggests that even violent offenders are amongst those whose conduct is protected by the Second Amendment. *See id.* Here, the records lack any evidence indicating that Branders is violent or has violent tendencies. Rather, the record specifically indicates that Nelson is the one who has angry outbursts. R. at 3. Additionally, though Branders was charged with child neglect, there are no facts indicating that Branders acted violently in the commission of the crime. On the contrary, when Branders realized Kenneth was missing, she immediately began contacting Nelson and Kenneth's mother to locate him. R. at 2. Under *Rahimi*'s facts, it reasonably follows that Branders, a non-violent offender who intends to possess a firearm for self-defense, is also protected by the Second Amendment, thus permitting her to bring an as-applied challenge to 18 U.S.C. § 922(g)(1).

C. *Heller*'s "presumptively lawful" language as applied to felon-in-possession regulations is merely dictum and does not require this Court to find that Branders's conduct falls outside the protections of the Second Amendment.

Rejecting as-applied challenges to 18 U.S.C. § 922(g)(1) based on *Heller*'s "presumptively lawful" language is unsupported by any historical justifications as required by *Bruen*. *Bruen* and *Heller* addressed issues unrelated to felon-in-possession regulations; thus, any proposition suggesting these regulations are presumptively lawful is regarded as dicta and is not binding in this case. Under *Bruen*'s current framework, the Government may not rely on presumptively lawful language and must demonstrate that disarming felons such as Branders is consistent with this Nation's firearm regulation traditions.

Dicta does not bind a subsequent court, whether as a matter of *stare decisis* or as a matter of law. *Wilder v. Apfel*, 153 F.3d 799, 803 (7th Cir. 1998). In *Heller*, this Court considered

whether a District of Columbia state prohibition on the possession of usable handguns in the home was a violation of the Second Amendment. *Heller*, 554 U.S. at 573. Specifically, the D.C. regulation required all handguns within the home to have a trigger lock and be registered. *Id.* at 576. Additionally, the regulation imposed a licensing requirement on the owner. *Id.* To resolve the constitutionality of the D.C. regulation, this Court undertook an extensive textual analysis of the Second Amendment to identify the right it was intended to protect. *Id.* at 578. The decision in *Heller* constrains the protections of the Second Amendment by noting that the right to bear arms is not unlimited; it is not a right to keep and carry any weapon whatsoever, in any manner whatsoever, and for whatever purpose. *Heller*, 554 U.S. at 626. Moreover, this Court cautioned that nothing in its opinions should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons. *Id.* Yet, *Heller* also made clear that the Court’s holding did not clarify or address the entire field of Second Amendment history. *United States v. Williams*, 113 F.4th 637, 643 (2024). Accordingly, a lack of historical tradition supporting “presumptively lawful” language does not create binding precedent on this Court and does not bar Branders’s as-applied challenge to 18 U.S.C. § 922(g)(1).

Similarly, *Bruen* presented the question of whether a “law-abiding citizen” had the right to carry a handgun in public for self-defense. *Bruen*, 597 U.S. at 8. Specifically, the point at issue was whether New York state law may require an individual who wishes to carry a firearm outside the home for self-defense to obtain an unrestricted license upon showing that proper cause exists for its issuance. *Id.* at 12. This Court declined to follow the two-step approach devised by multiple courts of appeals following the *Heller* decision. *Id.* at 17.

The approach taken by the courts of appeals before the *Bruen* decision was as follows: at the first step, the Government was required to justify its regulation by establishing that the

challenged law regulated an activity falling outside the protections of the Second Amendment as originally understood. *Id.* If the court ruled that the regulated activity fell outside the protections of the Second Amendment, as supported by historical evidence, the regulation would be deemed constitutional, and the analysis would be complete. *Id.* If, however, there was inconclusive evidence of a historical foundation or of the regulated conduct’s protection under the Second Amendment, the court applied a means-end scrutiny test. *Id.* This test included both a strict-scrutiny test and an intermediate-scrutiny test and weighed the severity of the regulations’ burden on the core right protected by the Second Amendment. *Id.*

Upon review of the two-step approach, this Court found it unsupported by the opinion outlined in *Heller* and abandoned the framework. *Id.* at 19. The Court reiterated that the standard for reviewing a challenged firearm regulation is that when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. *Id.* at 24. Thus, to support the regulation’s constitutionality, the Government must demonstrate that the regulation is consistent with this Nation’s historical traditions of firearm regulation. *Id.* at 24. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command. *Id.*

Many courts have followed “presumptively lawful” propositions outlined in *Heller* and have rejected any as-applied challenge. *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025) (relying on *Heller*’s “presumptively lawful” language in rejecting an as-applied challenge to a non-violent offender). However, in doing so, those courts have failed to abide by the analytical framework required by *Bruen*. In a separate opinion, Justice Alito noted that this Court decided nothing about who may lawfully possess a firearm in *Bruen*. *Bruen*, 597 U.S. at 72 (Alito, J., concurring). The opinions in both *Bruen* and *Heller* do not address felon-in-possession firearm

regulations, nor did the issues before the Court call for the Court to do so. Rather, *Heller* specifically defined the meaning of “the people” as referenced in the Second Amendment and expanded further on the central component of the right. *Heller*, 554 U.S. at 628-29. Additionally, in *Bruen*, this Court further redefined the approach to the constitutionality of firearm regulation, ultimately preempting any “presumptively lawful” language set forth in *Heller*. See *Bruen*, 597 U.S. at 17. It is improper for courts to rely on “presumptively lawful” and “law-abiding citizen” language in support of rejecting as-applied challenges to 18 U.S.C. § 922(g)(1). The holdings in *Bruen* and *Heller*, as applied to Branders, enable her to bring an as-applied challenge to 18 U.S.C. § 922(g)(1) and require the Government to demonstrate that the challenged regulation is rooted in this Nation’s historical tradition of firearm regulation.

II. The application of 18 U.S.C. § 922(g)(1) is a violation of the Second Amendment as applied to Branders’s felony conviction for child neglect.

This Court has established that the Government may not rest on the mere claim that a firearm regulation in question promotes an important governmental interest. *Bruen*, 597 U.S. at 17. Rather, the Government carries the burden of demonstrating that the regulation is consistent with the Nation’s historical tradition of firearm regulation. *Id.* Here, the Government has failed to prove its burden that the disarmament of Branders is consistent with this Nation’s historical tradition of firearm regulations. Moreover, history reveals that the central component of the Second Amendment is the right to self-defense; thus, this right should be protected amongst those who do not pose a present threat to society.

A. The Government has failed to identify a historical tradition of firearm regulation that justifies the categorical disarmament of Branders as required under the *Bruen* framework.

Necessitating that firearm regulation be rooted in founding era traditions aligns with how other constitutional rights are protected and with this Court’s history in interpreting the bounds of constitutional rights. *See Marsh v. Chambers*, 463 U.S. 783, 790 (1983) (interpreting the Establishment Clause by looking to historical evidence that reveals the drafters’ intended meaning of the clause); *see Crawford v. Washington*, 541 U.S. 36, 53-54 (2003) (deferring to the historical background of the Confrontations Clause as a guide in determining whether a defendant’s statement violated the clause). Further, this Court has found that reliance on history to inform the meaning of constitutional text is more administrable than requiring an empirical analysis regarding the costs and benefits of firearm restrictions. *Bruen*, 597 U.S. at 25.

Following the *Heller* opinion, the courts of appeals began addressing firearm regulation issues by following a two-step approach. *See* discussions *supra* Section I.A.2. The *Bruen* Court abandoned this approach and adopted an alternative two-step framework. *Bruen*, 597 U.S. at 19. Under the Second Amendment framework, the Government is charged with justifying a regulation’s burden on the individual’s right to self-defense by identifying a historical tradition of regulating firearm use by such individuals. *Diaz*, 116 F.4th at 464. In doing so, the Government is tasked with demonstrating that the regulation in question is “relevantly similar” to laws traditionally understood to be permitted. *Rahimi*, 602 U.S. at 681. This Court, in *Rahimi*, clarified that a “historical twin” is not required, but rather a “historical analogue” is sufficient to satisfy the inquiry. *Id.* at 701. Specifically, courts must study how and why the founding generation regulated firearm possession and determine whether the application of the modern regulation “fits neatly within” those principles. *Williams*, 113 F.4th at 648. Ultimately, courts applying the *Bruen* framework should consider whether the challenged regulation is consistent

with the principles that underpin this Nation's regulatory tradition. *Rahimi*, 602 U.S. at 703-704 (Sotomayor, J., concurring).

1. Categorical disarmament of all felons is overbroad and not grounded in founding era traditions.

Categorical disarmament of all felons is significantly overbroad and frustrates the protections intended by the Second Amendment. The felony category includes a broad range of conduct, from homicide to tax fraud. In addition to differences in conduct, felony offenses also differ in their punishment ranges. As an example, an aggravated murder charge, a felony offense in Virginia, is punishable by mandatory imprisonment for life. Va. Code § 18.2-31. In contrast, child neglect, the specific felony offense charged to Branders, is punishable by up to 10 years in prison. It is clear that the punishment level of each offense corresponds with the severity of the offense. Yet, under 18 U.S.C. § 922(g)(1), each offense, though drastically differing in severity, is punished equally. The *Bruen* framework was designed to ensure that every firearm regulation is consistent with laws that were understood to be permitted during the founding era. *Rahimi*, 602 U.S. at 681. Finding that the categorical disarmament of felons under 18 U.S.C. § 922(g)(1) is constitutional raises proportionality concerns as to the appropriateness of the permanent disarmament when compared to the punishment level of the underlying felony. Kristen Boguslawski, Note, *Felon Gun Possession Bans – The Constitutional Need to Distinguish Between Violent and Non-Violent Offenses*, 13 Belmont L. Rev. 537, 550 (2026).

Moreover, federal firearm regulations are a creation of recent legislation and are not rooted in this Nation's historical traditions. Federal firearm regulations applicable to felons began with the ratification of the Federal Firearms Act in 1938. *United States v. Booker*, 644 F.3d 12, 24 (1st Cir. 2011). Specifically, the law prohibited the possession of firearms by a limited set of violent offenders, such as those convicted of murder, rape, kidnapping, and burglary. *Id.*

Following the Federal Firearms Act was the enactment of the Omnibus Crime Control and Safe Streets Act of 1968, which incorporated 18 U.S.C. § 921-928. *United States v. Lopez*, 2 F.3d 1342, 1350 (5th Cir. 1993). It was the enactment of the Omnibus Crime Control and Safe Streets Act that expanded the prohibition of firearm use by all felons rather than just those convicted of violent crimes. Furthermore, the history of the enactment of 18 U.S.C. 922(g)(1) suggests the intended purposes of such prohibitions were to prevent those who demonstrated violent tendencies from possessing firearms. Accordingly, the categorical disarmament is too broad and is not founded in this Nation’s historical traditions of firearm regulation.

2. Courts must narrowly construe founding era traditions that regulate a subset of individuals.

In *United States v. Jackson*, the Eighth Circuit considered whether 18 U.S.C. § 922(g)(1) was unconstitutional as applied to an individual with a narcotics felony conviction. *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024). There, the Eighth Circuit ruled that the regulation was constitutional as applied to Jackson. *Id.* at 1127. Specifically, the court reasoned that there is no need for felony-by-felony litigation because there exists a history of restrictions on firearms by a subset of individuals. *Id.* at 1125-26. The court further concludes that the historical record suggests the legislature traditionally possessed the discretion to disqualify categories of individuals from possessing firearms. *Id.* In support of this proposition, the court relies on historical traditions of disarming groups of individuals who deviated from legal norms. *Id.* at 1127. The reasoning in *Jackson* has also been followed by the Fourth Circuit Court of Appeals in *United States v. Hunt*. *United States v. Hunt*, 123 F.4th 697, 707 (4th Cir. 2024). In *United States v. Hunt*, the Court of Appeals for the Fourth Circuit held that the legislature historically prohibited possession of firearms by a category of individuals based on the justification that the members within the category presented an unacceptable risk of danger if

armed. *Id.* The court reasoned that a determination of dangerousness could be made based on status, such as religious minorities, or on conduct, such as non-oath-takers. *Id.* Such broad disarmament was done without an individualized determination of the dangerousness of each individual within the prohibited class. *Id.* The reasoning applied in *Jackson* and *Hunt* is insufficient and fails to satisfy the narrow approach demonstrated in *Rahimi*. Finding 18 U.S.C. § 922(g)(1) constitutional on the basis that founding era traditions support the disarmament of a subset of individuals merely answers the “how” of the inquiry but does not answer the “why.”

The decision in *Rahimi* expanded on the historical framework and ruled that laws from the founding era that regulate a specific subset of individuals may be considered in the analysis, even if those regulations are not explicitly related to firearms. *Rahimi*, 602 U.S. at 693. In taking this approach, the ruling in *Rahimi* demonstrates that a court must narrowly construe founding era traditions intended to regulate a subset of individuals. *See Rahimi*, 602 U.S. at 698-99. Only where there is a finding of individual dangerousness may the individual be permanently disarmed. *Id.*

In *Rahimi*, this Court considered whether 18 U.S.C. 922(g)(8), a regulation prohibiting firearm use by an individual subject to a domestic violence restraining order, is a violation of the Second Amendment. *Id.* at 686. There, the Court found that a prosecution may proceed under 18 U.S.C. § 922(g)(8) only where: (1) the individual received actual notice and had an opportunity to be heard before the restraining order was entered; (2) the order must prohibit the individual from harassing, stalking, or threatening his intimate partner, or his or her partner’s child, or place either in reasonable fear of bodily injury; and (3) the order must contain a finding that the individual represents a credible threat to the physical safety of the intimate partner or his or her

child. *Id.* at 688. This Court found that Rahimi’s restraining order met all three criteria and was eligible to be prosecuted under the statute. *Id.*

In conducting the historical analysis as required by *Bruen*, this Court found that 18 U.S.C. § 922(g)(8) was relatively similar to founding era surety and going armed laws in both how and why the regulation burdens the Second Amendment right. *Rahimi*, 602 U.S. at 698. During the founding era, surety laws were intended to target the misuse of firearms by violent individuals, and going armed laws were a mechanism for punishing those who went armed with the purpose of terrifying the people of the land. *Id.* at 697-98. In identifying the intended purpose of the founding era laws, the Court held that surety laws and going armed laws were mechanisms to mitigate weapons misuse by a specific group of individuals who posed a present credible threat to society. *Id.* at 698. In a similar manner, 18 U.S.C. § 922(g)(8) temporarily restricts firearm use by individuals who are subject to a restraining order and have demonstrated that they pose a present threat to society. *Id.* at 698-99. The ruling in *Rahimi* demonstrates how courts must adhere to a narrow interpretation of founding era laws when the law is not explicitly related to firearms but is intended to regulate a subset of individuals. *See id.* at 699. Surety and going armed laws support the permanent disarmament of violent individuals, answering the “how.” *Id.* Further, the intended purpose of disarmament is to protect against those who pose a present threat to society and those around them, addressing the “why.” *Id.* According to the framework set forth in *Rahimi*, before 18 U.S.C. § 922(g)(8) can be applied, there must be a finding of individual dangerousness.

The Court of Appeals for the Fourteenth Circuit defers to the reasoning in both *Jackson* and *Hunt* and holds that Branders may be permanently disarmed under 18 U.S.C. § 922(g)(1). R. at 10. However, this argument fails to satisfy the narrow approach suggested by *Rahimi*. Upon

narrowly construing founding era traditions of categorically disarming individuals who deviate from legal norms, it is clear historical traditions of regulating a subset of individuals is insufficient to support the permanent disarmament of Branders under 18 U.S.C. § 922(g)(1).

As applied to Branders, founding era regulations that disqualified categories of individuals from possessing firearms answer the “how,” but do not provide a targeted reason for the disarmament of these specific individuals and thus fail the “why” part of the inquiry. As the Fifth Circuit Court of Appeals notes in *Diaz*, simply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny. *Diaz*, 116 F.4th at 469. The definition of felony is subject to change, and crimes categorized as felonies today would not have been considered felonies during the founding era. *Id.* Rather, the intended purpose for the regulation must be narrowly delineated as demonstrated in *Rahimi*. Accordingly, historical traditions of regulating felons must answer the how and the why 18 U.S.C § 922(g)(1) may burden Branders’s Second Amendment right. Additionally, *Rahimi* calls for a finding that Branders poses a current threat to others. Here, historical traditions of regulating the firearm use of a subset of individuals are insufficient to support the categorical disarmament of felons and fail the *Bruen* historical analysis. Further, the Government has failed to provide any evidence demonstrating that Branders poses a current threat to society, as was demonstrated in *Rahimi*. Accordingly, 18 U.S.C. § 922(g)(1) is unconstitutional as applied to Branders.

B. This Nation’s historical traditions confirm that the right to bear arms in one’s home is a fundamental component of the Second Amendment, and the right should be protected amongst those felons who do not pose a present danger to society.

The right to bear arms for self-defense is deeply rooted in this Nation’s historical traditions. *Heller*, 554 U.S. at 599. As Justice Scalia notes, the ability to defend oneself is the

central component of the Second Amendment right. *Id.* at 628. The right to bear arms was a pre-existing right codified in the Constitution in response to threats from the New Federal Government to destroy the citizens' militia by confiscating their arms. *Id.* at 599. Moreover, Pre- and post-ratification history have emphasized the importance and necessity of the Second Amendment right in this Nation's system of government. State constitutions widely protect the right to bear arms. *McDonald v. City of Chicago, Illinois*, 561 U.S. 742 (2010). In 1868, 22 of the 37 states in the Union had state constitutional provisions explicitly protecting the right to keep and bear arms for self-defense. *Id.* at 777. As an example, Pennsylvania's Declaration of Rights of 1776 indicated that the people have the right to bear arms for their defense and the defense of the state. *Id.* at 601. Additionally, Vermont adopted an identical provision in 1777. *Id.* As this Court noted in *McDonald*, the need for self-defense, family protection, and property protection is most acute in the home. *Id.* at 628-29. The history of state constitutions demonstrates that the right to bear arms was intended for self-defense purposes. Here, the record clearly indicates that Branders possessed a firearm in her home for self-defense. R. at 3. When Branders was gifted the firearm, it was with the intended purpose that Branders would have it for protection. *Id.* Against this historical backdrop and with the facts at hand, ruling 18 U.S.C. § 922(g)(1) constitutional as applied to Branders is not rooted in this Nation's history and is an infringement on her Second Amendment right to bear arms.

Further, post-ratification case law and legislation confirm that the central component of the Second Amendment was the right of individuals to defend themselves. In a case of self-defense, the Louisiana Supreme Court held that the Second Amendment right guaranteed by the Constitution is calculated to incite men to a manly and noble defense of themselves or of their country. *State v. Chandler*, 5 La. Ann. 489, 490 (1850). Additionally, extensive discussions

surrounding post-Civil War legislation and the rights of newly freed slaves confirm that self-defense is the central component of the Second Amendment. *Heller*, 554 U.S. at 616. As Representative Butler said of the Civil Rights Act of 1871, Section Eight of the Act is intended to enforce constitutional provisions guaranteeing the right of citizens to keep and bear arms, the arms and weapons which any person may have for his defense, and anyone who shall take away this right shall be deemed guilty of larceny. *Id.* More recently, this Court, in *Bruen*, held that confining the right to bear arms to the home would make little sense, given that self-defense is the central component of the Second Amendment. *Bruen*, 597 U.S. at 34. Accordingly, this Court held that the right to bear arms extended to bearing arms in public. *Id.* To permanently disarm Branders and revoke her Second Amendment right is not supported by the historical tradition of the amendment. The record demonstrates that as Branders's relationship with Nelson began to deteriorate, she began to suspect he was involved in selling illegal narcotics. R. at 3. Branders began to fear the individuals Nelson would bring into her home. *Id.* It is evident from the record that Branders accepted the firearm only after she expressed her fears of Nelson's friends. *Id.* Branders was hesitant to accept the firearm, and there is no evidence that Branders was ever interested in possessing one. *Id.* Rather, Branders accepted the firearm after the encouragement of another person who recognized the potential danger she was in. *Id.* Branders's ability to accept the firearm for her protection is the fundamental right granted to her by the Second Amendment. Holding 18 U.S.C. § 922(g)(1) constitutional, as applied to Branders, strips her of the very right the Second Amendment was intended to protect.

1. The ruling in *Range* illustrates the appropriate approach this Court should take in evaluating the constitutionality of 18 U.S.C. § 922(g)(1) as applied to Branders.

The opinion of the Court of Appeals for the Third Circuit in *Range v. Attorney General United States* demonstrates the correct approach in applying the Second Amendment framework outlined in *Bruen* and *Rahimi* as applied to the facts in Branders’s case. See *Range v. Attorney General United States*, 124 F.4th 218, 232 (3rd Cir. 2024). In *Range*, Bryan Range was convicted of food-stamp fraud, a felony offense, and sentenced to three years’ probation. *Id.* at 223. Several years later, Range was prohibited from purchasing a firearm due to his conviction, and thus, Range brought an as-applied challenge to 18 U.S.C. 922(g)(1). *Id.* The court of appeals ruled that the Second Amendment protected Range's conduct and proceeded to the second step of the *Bruen* analysis. *Id.* at 228. There, the court of appeals reasoned that the founding era traditions of disarming groups of distrusted individuals were an insufficient historical analogue, as there is no evidence to indicate that Range falls within a similar group of individuals today. *Id.* at 229. This analysis follows the requirements set forth in *Bruen*. Furthermore, the court concluded that there was no evidence that Range posed any physical danger to others and thus found no support for permanent disarmament. *Id.* at 232. An individualized analysis of dangerousness follows the requirements set forth in *Rahimi*. Accordingly, the court ruled 18 U.S.C. § 922(g)(1) unconstitutional as applied to Range. *Id.*

The opinion in *Rahimi* demonstrates the application of the historical tradition framework proposed by this Court in *Bruen*. This framework, as applied to Branders, requires that the Government justify why individuals convicted of child neglect may be permanently disarmed and conduct an individualized analysis for dangerousness. Here, the Government has not pointed to a single historical tradition of regulating the firearm use by those convicted of child neglect, nor has the Government pointed to a “relatively similar” regulation. Furthermore, the

Government has failed to provide any evidence indicating Branders poses a present threat to others. *See* discussion *infra* Section II.B.3. As Justice Pinckney notes in the dissenting opinion, there were few laws, if any, related to child neglect during the founding era. R. at 10-11. Similar to the holding in *Range*, 18 U.S.C. § 922(g)(1) is unconstitutional as applied to the facts in Branders’s case.

Lastly, the Court of Appeals for the Fourteenth Circuit adopts the reasoning of the Fourth Circuit and contends there is no need for felony-by-felony litigation regarding the constitutionality of 18 U.S.C. § 922(g)(1). R. at 10. However, as previously discussed, an individualized historical analysis of the predicate offense is consistent with this Court's rulings in *Rahimi* and *Bruen*. A potential concern with this approach is the strain on judicial resources due to increased litigation. However, any regulation that may burden an individual right granted by the Constitution requires the utmost care and attention from the court. Moreover, an individualized historical approach guided by the *Bruen* framework yields consistent results. The means-end scrutiny approach, as adopted by several courts of appeals, was ruled inconsistent with the opinion in *Heller*; thus, the *Bruen* framework was adopted. *Bruen*, 597 U.S. at 23. In doing so, the *Bruen* framework offers courts metaphorical bumper lanes in approaching a Second Amendment challenge. Requiring that all firearm-related regulations be grounded in historical traditions ensures reliable findings on their constitutionality. As Justice Kavanaugh notes in his concurring opinion of *Rahimi*, “reliance on history is more consistent with the properly neutral judicial role than an approach where judges subtly (or not so subtly) impose their own policy views on the American people.” *Rahimi*, 602 U.S. at 718 (Kavanaugh, J., concurring).

2. Recent findings in support of the constitutionality of 18 U.S.C. § 922(g)(1) are distinguishable from Branders's case.

Further, recent findings in support of 18 U.S.C. § 922(g)(1) are distinguishable from the facts in Branders's case because she does not pose a present threat to society and thus should not be permanently disarmed. An understanding of the Second Amendment, grounded in its historical origins, guides courts in delineating the limits on the exercise of the right. *Bruen*, 597 U.S. at 21. As this Court has noted, the right secured by the Second Amendment is not unlimited. *Id.* Rather, *Rahimi* and similar cases demonstrate how historical regulatory traditions shape the Second Amendment's limitations. *Rahimi*, 602 U.S. at 699 (ruling that individuals who present a credible threat to the physical safety of others may be disarmed); *Watson*, 171 F.4th at 1024 (finding a predicate offense of narcotics distribution sufficient to lawfully disarm an individual as drug dealers are understood to be dangerous); *Diaz*, 116 F.4th at 472 (holding that a predicate offense of car theft is grounded in founding era regulations supporting disarmament of individuals convicted of this crime).

By contrast, courts have also delineated the bounds of the Second Amendment by identifying instances in which the exercise of the right remains protected. *Range*, 124 F.4th at 232. As illustrated in *Range*, the court of appeals ruled that Bryan Range could not be permanently disarmed where there was a lack of evidence indicating that Range posed a physical danger to others. *Id.* at 230. Similar to Range's case, the Government has failed to provide any evidence indicating Branders poses a present threat to others such that she should be permanently disarmed and stripped of her right to self-defense with a firearm. Moreover, the present threat of dangerousness, as it existed in cases such as *Rahimi* and *Watson*, further distinguished Branders. The court of appeals in *Watson* ruled that narcotics and firearms together are dangerous and thus

call for the permanent disarmament of individuals with a predicate conviction of a narcotics offense. *Watson*, 171 F.4th at 1024.

The evidence is clear that Branders is hardly similar to individuals like Watson and Rahimi. The record demonstrates that Branders does not pose a current threat to society. To the contrary, Branders has continued to have a positive impact on society through her volunteer work. R. at 3. To further evidence Branders's lack of dangerousness, the record reveals that Branders was not sentenced to prison but instead was placed on probation. R. at 3. Rather, it was Nelson who received a four-year prison sentence. R. at 3. A probation sentence in place of prison, and the differing treatment of Branders and Nelson further highlight facts that distinguish Branders's case from cases like *Rahimi*, *Watson*, and *Jackson*.

To rule that 18 U.S.C. § 922(g)(1) is constitutional as applied to Branders requires that the Government demonstrate a historical tradition of regulating the firearm use of felons, in addition to demonstrating “how” and “why” such regulation does not burden an individual's Second Amendment right. Here, the Government failed to provide any historical traditions supporting Branders's permanent disarmament. Additionally, this Court has ruled that the central component of the Second Amendment is the right to self-defense. A finding that 18 U.S.C. § 922(g)(1) is constitutional as applied to Branders, an individual who does not pose a present threat to society, goes directly against the intended purpose of the Second Amendment.

CONCLUSION

The history and the plain text of the Second Amendment establish that felons are amongst those whose conduct is protected by the Second Amendment to bring an as-applied challenge to 18 U.S.C. § 922(g)(1). Here, the application of 18 U.S.C. § 922(g)(1) is unconstitutional as

applied to the facts in Branders's case. For these reasons, this Court should reverse the judgment of the Court of Appeals for the Fourteenth Circuit.

/s/ Team KP
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